NOTES

WELFARE REFORM: THE CASE FOR A SYSTEMATIC APPROACH

> But to all those who depend on welfare, we should offer ultimately a simple compact: We'll provide the support, the job training, the child care you need for up to two years; but after that, anyone who can work must—in the private sector wherever possible, in community service if necessary. That's the only way we'll ever make welfare what it ought to be: a second chance, not a way of life.[1]

Welfare reform has become one of the favorite issues of political discussion since the 1992 Presidential campaign. Both Democrats and Republicans, state and national officials, private and public commentators alike have professed disdain for the current welfare system in the United States.[2] Almost any platform which espouses a change in the current system seems to be instantly popular. It should not be surprising, then, that a myriad of proposals for changing the welfare system have surfaced lately. Since 1988, at least fifteen states have been given permission to test alternative plans, with many more currently under consideration.[3] This number does not include other state legislation reforming the way that wholly state-funded programs are administered.

With welfare expenditures rising steadily, the principal goal of most current welfare-reform proposals has been to place welfare recipients in jobs in the private sector, and thus avoid the need to provide public assistance altogether.[4] Although welfare programs in previous decades encouraged parents to stay at home with their children,[5] a consensus is forming among the public and among policy makers that our welfare system should encourage welfare parents to work outside the home.[6] In devel-

1. President William J. Clinton, Address to the Joint Session of Congress on the State of the Union (February 15, 1994).

2. Tom Morgenthau, *The Entitlement Trap*, NEWSWEEK, Dec. 13, 1993, at 33.

3. *Id.*

4. Bob Moos, *Welfare Reform Won't Be Easy*, DALLAS MORNING NEWS, Feb. 5, 1993, at 23A.

5. In fact, under the original Aid to Dependent Children legislation, the intent was to allow single mothers "to care for their children without being compelled to seek or hold a job. A mother's principal role was seen as that of a caregiver and homemaker, not that of a breadwinner." GARY BURTLESS, THE EFFECT ON REFORM ON EMPLOYMENT, EARNINGS, AND INCOME, IN WELFARE REFORMS FOR THE 1990'S 103, 105-06 (Phoebe H. Cottingham & David T. Ellwood eds., 1989).

6. In 1972, 49% of people believed mothers receiving welfare should be required to take any job offered. By 1991, that number rose to 79%. By 1992, the number was 80%. Lucy A. Williams, *The Ideology of Division: Behavior Modification Welfare Reform Proposals*, 102 YALE L.J. 719, 746 n.177 (1992).

Both Democrat and Republican leaders have responded to the public's desire for work requirements. In addition to President Clinton's comments (*see supra* note 1), the Speaker of the House has declared that Republicans "will work to . . . create incentives to get people to work while allowing governors to reform welfare at the state level, where change is most effective." Newt Gingrich, *Beyond the 100 Days*, N.Y. TIMES, Feb. 22, 1995, at A19.

Commentators overwhelmingly agree that the modern political climate favors work requirements for welfare recipients. Elizabeth Shogren, *Child Care is Stumbling Block to Self-Sufficiency; Single* oping a welfare-reform package which will guide the most people from welfare to work, however, states encounter two significant problems.

The first such problem is that the American welfare system is not a "system" at all; in order to respond to the specific needs of poor individuals and families over time, various legislatures have created a web of programs administered on the federal and state levels, as well as many programs which are administered by the states, but with some degree of federal oversight and funding.[7] Therefore, when states decide to change the current welfare package they offer their residents, they often do not have the power to make substantive changes in federal or quasi-federal programs. The result is, at best, a piecemeal approach to welfare reform, and at worst, an approach which is subverted by conflicting federal policy. The existence of dual state and federal regulatory authority in this area, then, suggests that reform will have to take place on more than one level to be effective. Federal law may be the most efficient way to reform exclusively federal programs, and even programs with dual state and federal authority, but individual states which offer their own general support programs must also coordinate them to be consistent with federal policy.

A more overwhelming problem for legislators who want to keep recipients off the welfare rolls and into private employment, however, is the fact that these recipients often have no economic incentive to seek employment. Most often, the only positions available to a welfare recipient are at minimum wage. At the current minimum wage of $4.25 per hour, an employee working 40 hours a week will earn $8,840 per year. This amount of earnings, while below the poverty level for a family of two, will disqualify them for AFDC assistance and its accompanying Medicaid coverage.[8] When the costs of child care, work-related expenses, and lost benefits under other programs are factored in, accepting a job in the private sector radically reduces the income of most welfare recipients. Some studies on this issue have concluded that a mother of two children on welfare would have to earn at least $7.59 an hour just to make up for lost health benefits and food stamps.[9] Some people estimate that for a mother of one

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Mothers Find Earning Paycheck Costs More Than Welfare, DALLAS MORNING NEWS, Mar. 20, 1994, at 13A. *See also* THEODORE R. MARMOR et al., AMERICA'S MISUNDERSTOOD WELFARE STATE: PERSISTENT MYTHS, ENDURING REALITIES 231 (1990) (describing the Family Support Act of 1988 as a collective determination that "work should be thoroughly integrated with welfare . . . ."), and JOEL F. HANDLER & YEHESKEL HASENFELD, THE MORAL CONSTRUCTION OF POVERTY: WELFARE REFORM IN AMERICA 210-20 (1991). Some commentators would argue that this is not actually a point of consensus in our society, but rather a point of "compromise" between liberal and conservative forces, each of which view an incentive to work as an acceptable part of their agenda on welfare reform. Martha Minow, *The Day, Berry & Howard Visiting Scholar: The Welfare of Single Mothers and their Children*, 26 CONN. L. REV. 817, 821 (1994). But even these commentators agree that our current public policy discussion "treats as unquestionable the basic assumption that [welfare recipients] should be treated like any other ablebodied poor person and be moved as soon as possible away from dependence on public benefits into the labor market." *See* Minow, at 823.

7. An exhaustive list of such programs is impossible to include here, but the main governmental vehicles for the support of America's poor include: Aid to Families with Dependent Children (AFDC) (administered by the states with federal funding), Medicaid, WIC, Food Stamps (administered by the federal Agriculture Department), Social Security Disability payments (administered by the Social Security Administration, apart from Social Security Insurance payments), various housing subsidy programs administered under HUD, Veteran's non-combat related benefits, Child care benefits under the Family Support Act of 1988 (administered and funded by the states, under a federal mandate), as well as the general support payments offered by many states individually, or state test programs run under a special waiver from applicable federal regulations.

8. Jean Hopfensperger, *Poverty's Price: $4.25*, MINN. STAR TRIB., Mar. 29, 1993, at 1B.

9. *Id.*

to make up for all lost welfare income, she would have to find a job paying $9 per hour.[10] This type of income is even harder for a single mother to earn, since women can expect to receive only 70% of men's wages.[11]

The overarching structure of our welfare "system," then, disqualifies a normal family once they reach the income level provided at minimum wage, yet provides benefits which—once every federal and state program is taken into account—far exceeds this amount. This results in a systematic and constant incentive for the welfare recipient to stay unemployed. Efforts to reform the welfare system in order to achieve full employment, then, have to fight an uphill battle. Current state efforts to move recipients from welfare to work have used two main strategies to try and overcome this employment disincentive. The first method has been to lower direct payments under cash-assistance programs such as AFDC. A number of states have lowered these types of cash payments in recent years.[12] Unfortunately, this has done little to change a welfare recipient's economic incentives in these states. This is because cash payments are, in general, still not enough to raise a normal family out of poverty.[13] This limits the political possibility of significantly cutting cash payments. These advantages, when combined with the cost of child care—which is typically an expense only for the employed—and the high cost of replacing Medicaid benefits—which automatically come with AFDC or SSI cash payments—are significant enough to keep people on welfare, despite minimal reductions in cash payments.

The second method which states have used to get recipients off of welfare rolls has simply been to mandate it. A number of states have developed plans which limit the amount of time a family may spend on welfare.[14] After this time, some states propose to cut off all payments, while others would guarantee at least a minimum-wage job from the government. Typically, some type of job training is offered within the allotted time period. Other plans simply require a recipient to accept a minimum-wage job once one is offered. These plans have the advantage of totally circumventing the welfare system's incentive structure by limiting the choice of recipients to remain on welfare. However, these plans are ultimately only stop-gap measures; if the underlying incentive structure still remains, recipients will tend to stay unemployed for the maximum time period allowed, and re-apply after having worked long enough to qualify for benefits again. Also, the possibility of collusion and fraud remain high when economic incentives remain.[15]

Therefore, in devising a welfare system which actually gives incentives to move

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10. Judith P. Tilaro, *Our Welfare System Provides a Disincentive to Work*, SAN DIEGO UNION-TRIB., Sept. 12, 1993, at G-3.

11. Ruth A. Brandwein, *For Welfare Recipients, Work Doesn't Pay*, NEWSDAY, Oct. 14, 1993, at 125.

12. In 1991, thirty-nine states cut or froze benefits in the AFDC program. *Welfare Reform*, FINANCIAL WORLD, May 12, 1992, at 58. In 1992, Forty-four states cut or froze benefits to low-income families with children. Rebecca H. Patterson, *Recession-Weary States Made Deep Welfare Cuts in 1991, '92*, ST. PETERSBURG TIMES, Feb. 10, 1993, at 5A.

13. The poverty line for a family of two is $9,500; for a family of three, it is $11,600. AFDC income differs from state to state, but on average hovers around $8,500 for a family of two. *See* Jean Hopfensperger, *supra*, note 8.

14. *See infra* part I.

15. Tilaro, *supra* note 10. The author recounts the story of a woman who, in order to subvert a California rule which requires a recipient to accept any minimum-wage job a caseworker can arrange, deliberately performed badly enough to be fired from three jobs in seven days.

from unemployment to work, a more comprehensive approach must be adopted. The underlying incentive structure surrounding welfare payments requires change in order to offer a systemic incentive, rather than disincentive, from the point of view of the individual welfare recipient. The first practical step toward making this incentive structure a reality lies in being able to compute the total amount of benefits—both direct and indirect—which an individual receives from being on the welfare rolls. The second step would be to ensure that this total does not exceed any income available in the private sector. Political forces may make it impossible to implement a system where the total of these benefits can be reduced below the minimum wage; after medical and child-care benefits are factored in, this would require an extraordinarily low cash stipend for daily living. However, an alternate system can be devised whereby, once a welfare recipient begins to earn income above the threshold that disqualifies a family for benefits, a portion of that income is either deducted from cash payments, or used to pay for direct services. If a recipient's income ever grows beyond the amount of total yearly benefits, then the recipient would be completely ineligible for benefits. This type of system, which would essentially stagger the income level at which an applicant becomes ineligible for welfare, would always allow a recipient to keep a portion of his increased income, and always give an economic incentive to earn private income.

This note advocates the adoption of such a comprehensive welfare payment system in order to offer a systemic incentive for welfare recipients to work. Part I examines previous and contemporaneous attempts at welfare reform which attempt to bring welfare recipients into the workplace. These attempts are divided into what this note terms "reactionary" plans—plans which attempt to overcome the current disincentive to work implicit in the welfare system through instituting other programs and requirements—and "systemic" plans—plans which attempt to eliminate this underlying disincentive and replace it with a monetary incentive to work. Strengths and shortcomings of each attempt are examined. Part II attempts to mold a new, comprehensive systemic approach to welfare payments by incorporating the strengths of previous systemic attempts. Ultimately, such a comprehensive system can be formulated by combining two model payment plans, one dealing with cash benefits, and another dealing with direct services provided to welfare recipients. Such a widespread change in the distribution of welfare benefits could only be effectively accomplished through federal legislation. Part III proposes that the adoption of such legislation on a federal level would be justified from a policy standpoint.

Before beginning the discussion of this topic, it is useful to examine exactly what areas in the modern welfare-reform movement this note does not address. This note is not a proposal for "workfare," or similar programs which would require a recipient to offer public service in return for welfare benefits. However, this note ultimately concludes that a systemic payment approach is compatible with workfare. Nor is this note a proposal for any of the recent state or federal reform programs which would condition receipt of welfare benefits on a change in the recipient's behavior.[16] This note

16. Various state proposals have capped benefits to families who have additional children while receiving welfare; reduced benefits when the family's children are tardy or absent from school; reduce benefits for mothers who do not seek prenatal care; or require unwed recipients with children to live with their parents. For a breakdown of recent state efforts in this area, *see* Elizabeth Neuffer, *Cash-Hungry States Revamp Welfare*, BOSTON GLOBE, July 22, 1992, at 1. More recently, the Republican-led Congress has proposed to eliminate welfare benefits for unwed mothers under the age of 18. *See infra*

also concludes, however, that such programs would be compatible with a systemic payment system.

I. RECENT WELFARE REFORM PROPOSALS

Many state and federal programs have been instituted in recent times that attempt to move more people from welfare to work. State reform programs which change welfare administration in such a way as would be inconsistent with federal welfare law may receive a waiver from the federal government to create these programs.[17] The number of individual state and local test projects is large indeed, but the vast majority of these programs can be grouped into four categories: 1) programs which offer job training to welfare recipients in hope they will then be able to move into the private sector, 2) programs which put direct limits on the amount of time a family may receive welfare benefits, 3) programs which seek to find jobs for recipients by subsidizing the employer's costs of hiring them, and 4) programs which alter the payment system of welfare benefits so as to allow a recipient to keep a portion of private income. All of these previously-attempted approaches, however, fail to create a system that is practical on a national level, for one of three reasons. Either these programs fail to provide an adequate economic incentive for people at all income levels to seek private employment, fail to provide an adequate "safety net" for poor families, or fail to provide adequate cost containment from a governmental point of view, so as to become fiscally practical. Elements of many of these plans, however, can be incorporated into a systemic approach that can accomplish these three goals. Such an approach is outlined in Part II.

A. Job Training Programs

In addition to giving states the ability to obtain waivers from the federal government in order to make their own changes in the administration of welfare, the Family Support Act of 1988[18] created its own plan aimed at placing more welfare recipients in the private workforce. This plan, called J.O.B.S.—Jobs, Opportunities, and Basic Skills—forced all states to create job training programs for welfare recipients,[19] while requiring recipients to participate in these job-training courses, unless they were continuing their regular education or were currently working.[20] Funding for these job-training programs was left up to the states, however, with few particular mandates concerning how much a state was required to support these programs.[21] In the midst of the

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part I.F. For an introduction to the separate, but important, issue of welfare reform as a vehicle for changing recipients' behavior, *see generally*, Julie Kosterlitz, *Behavior Modification*, 24 NAT'L J. 271 (1992), and Lucy A. Williams, *The Ideology of Division: Behavior Modification Welfare Reform Proposals*, 102 YALE L.J. 719 (1992).

17. *Welfare Reform*, *supra* note 12.

18. Pub. L. No. 100-485, 102 Stat. 2343 (codified as amended in scattered sections of 42 U.S.C.).

19. Lloyd Bentsen, *Reforming the Welfare System: The Family Support Act of 1988*, 16 J. LEGIS. 133, 137 (1990).

20. *WPA Plan Would Help Welfare Recipients*, ST. LOUIS POST-DISPATCH, Apr. 29, 1992, at 2C. *See also*, Chris Payne, *Program Gives Welfare Recipients a Chance to Stand on Their Own*, HOUS. CHRON., July 6, 1992, at A9.

21. The Family Support Act of 1988 requires states to include a specified percentage of welfare recipients within the JOBS program. Bentsen, *supra* note 19, at 138. These participation rates received under the JOBS program have been set particularly low in order to retain costs at the federal and state levels. Paul Offner, *JOBS: How Are We Doing? Where Are We Going?*, PUB. WELFARE, Summer 1992, at 8.

nationwide recession in the early 1990's, states became less able to provide support for these programs, and were able to require fewer recipients to participate.[22] Therefore, the extent to which this program is in force varies from state to state.[23] States collectively have claimed only sixty percent of the funds set aside for the J.O.B.S. program.[24]

Aside from its obvious funding problems, the Family Support Act has a number of more basic shortcomings. To begin with, many commentators have argued that the type of job training available to welfare recipients under such a program does not actually provide skills that lead to opportunities for decent employment.[25] Some commentators have noted that such programs often do not teach industry-specific skills that are valuable to employers, but rather emphasize remedial education.[26] Other commentators argue that the low-level skills taught in such programs do not lead to jobs which pay high enough wages—thus eliminating any realistic prospect of lifting participants out of the welfare system.[27]

Criticisms about the program's effectiveness are compounded by complaints about its cost. Creating and administering job training courses entails costs which, many have estimated, are not justified when compared to the small amount of welfare recipients that obtain employment because of them.[28] The administrative costs of such programs have been estimated at close to $15,000 per person per year. The real cost of these programs are not limited to the expense of administering them, however. To the extent that states require recipients with children to receive job training, additional costs are incurred in providing child care for these families. In short, job training seems to be a rather expensive way to move welfare recipients into the private marketplace.

Cost and effectiveness aside, job training programs alone fail to do away with the underlying economic disincentive to obtain private jobs that the welfare system presents to recipients. If anything, job training simply adds to the benefits that recipient families receive from welfare. When compared to the effective income that welfare programs provide, the great majority of jobs that would be available to graduates of a job training program still do not offer an enough money to give a family an economic incentive to seek private employment. Job training programs, then, do not offer a systemic incentive to join the private workforce—that is, they do not change the economic realities behind the choice to stay on welfare. In order to motivate any individual re-

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22. *Make Workfare Work; To Fulfill Its Promise, Welfare Reform Needs an Overhaul—and More Federal Funds*, NEWSDAY, Apr. 8, 1992, at 56. *See also*, Jean Hopfensperger, *A History of Failed Reform; Long-Term Welfare Solutions Will Require Sticking to Long-Term Strategy, Experts Say*, MINN. STAR-TRIB., Dec. 12, 1993, at 36A.

23. Each state has an individual name for its J.O.B.S. program. The names for such programs often involve a considerable amount of ingenuity. Riverside County in California has GAIN—Greater Avenues for Independence; Ohio has LEAP—Learning, Earning, and Parenting.

24. Julie Kosterlitz, *Reworking Welfare*, 24 NAT'L J. 2189 (1992).

25. *See* Jean Hopfensperger, *supra* note 22.

26. Michael Abramowitz, *Doledrums: Two Plans That Won't Fix Welfare; New Jersey and California Welfare Cuts*, NEW REPUBLIC, Mar. 30, 1992, at 16.

27. Joyce Hackel, States News Service, Jan. 12, 1989, *available in* LEXIS, News Library, Wires File.

28. *The Job Corps: A Continuing Federal Effort*, 15 NAT'L J. 899 (1983) (criticizing the cost of youth-training programs). *See also* Milton Coleman and Courtland Milloy, *Two Views of Job Training: Optimism and Despair*, WASH. POST, Feb. 16, 1983, at A1 (criticizing job-training costs at Lorton prison).

cipient to get a private job, then, such a non-systemic approach must overcome the natural economic incentive with a more brash, confrontational message.[29] These approaches will at best be inefficient, and at worst be ineffective, if the underlying payment system still offers a continuous economic disincentive toward private employment. In sum, then, job training programs offer little in the way of offering a real economic incentive for a recipient to move into the private workforce, while also presenting difficult issues in cost containment for the government.

B. Time Limit Programs

The federal government has been concentrating on providing welfare recipients with the tools to obtain a private job through job training. Some state efforts, meanwhile, have attempted to circumvent the incentive to remain on welfare by ceasing benefits after a certain time. Such programs have the benefit of ultimate simplicity; the state simply makes it legally impossible for a recipient to choose to remain on welfare for more than a short period. Different states have chosen to vary the particulars of these plans, including the amount of time a family may continually receive benefits, the extent of these benefits during this limited time period, and what type of fallback provisions the state offers when this time period is over.[30]

The state of Wisconsin has recently been granted waivers by the federal government to institute such a plan statewide by 1999.[31] Under this plan, called "Work, Not Welfare,"[32] the state sets a two-year limit on the amount of time recipients may receive welfare benefits.[33] Within the two-year time period, recipients are required to accept private employment, with income being deducted dollar for dollar from their cash assistance payments.[34] If recipients cannot find work, they are assigned non-wage earning jobs in the public sector.[35] At the end of the two-year period, the guarantee of public employment ceases along with cash benefits.[36] Medicaid and food stamp assistance continues as long as the family is income-eligible.[37]

While other states have considered time-limit programs with different specific provisions,[38] all time-limit plans have similar shortcomings. No pure time-limit plan offers an economic incentive for recipients to leave welfare within the two-year period. Welfare benefits are not substantively adjusted, so the amount of total benefits which a

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29. One job-training center, for instance, displays a poster of a cartoon gorilla brandishing a club, with the words "This is our incentive program. Now go out and ...GET A JOB." Julia Malone, *Welfare Reform: California Experiment Aims to Get People into Jobs Fast*, ATLANTA J. & CONST., Apr. 12, 1993, at A5.

30. States which have recently considered some form of time-limit program include Connecticut (*see* Valerie Finholm, *Official Sees End to 'Welfare as We Know It'; Despite Reform, Welfare Remains Political Issue; Republicans Want to Get Tough*, HARTFORD COURANT, Feb. 27, 1994, at B1), and Massachusetts (*see* Don Aucoin, *Mass. Senate Backs Time Limit on Welfare*, BOSTON GLOBE, Feb. 17, 1994, at Metro 1).

31. Rogers Worthington, *The Welfare Challenge; Milwaukee Program Could Provide Antidotes for a National Malady*, CHI. TRIB., Mar. 20, 1994, at C1.

32. Wis. Stat. Ann. § 49.27(1)(c) (West Supp. 1994).

33. *Help or Hurt?; Welfare Recipients Wary of Experiment*, PHOENIX GAZETTE, Nov. 3, 1993, at A2.

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *See supra* note 30.

family receives still far outpaces most jobs available. Thus, time limits only cap the underlying incentive structure, rather than do away with it. Shorter time-limits, of course, could make this less of a problem, but at the cost of providing less job training to recipients, or reducing their ability to acclimate to a new, private job.

In addition, every time-limit plan will necessarily involve a difficult administrative problem. The question of when a family will become re-eligible to apply for benefits once they have been cut off is a thorny issue. To the extent a state allows a family to re-qualify after a short time, cost containment will be more of a problem; also, the possibility of fraud—in the form of recipients taking a private job when required and then getting fired once they can re-qualify—will be more vibrant. To the extent that a state requires a family to wait a longer time before re-qualifying (or prohibits re-qualification altogether), more strain is placed on families who truly need an economic "safety net" at more than one time in their lives.

The need for an adequate safety net has also been a point of concern for critics of time-limit proposals. The Wisconsin plan, in particular, has been widely criticized for offering no base level of cash income for poor families once the two-year limit has passed.[39] Some time-limit proposals have offered more of a safety net through a guarantee of a minimum-wage public-interest job at the end of the two-year period.[40] Even these proposals, however, provide little in the way of a true safety net. This is because a minimum-wage job is not adjusted for family size. A single minimum-wage income will not even bring a family of two out of poverty.[41] Larger families, then, will not have adequate support under such a system.

Analysis of time-limit programs, then, would suggest that they suffer from two main shortcomings: they do not do away with the underlying economic incentive to stay on welfare, and they typically offer little in the way of economic safety nets for large families. Cost savings, however, are the major advantage of this reform option; such cost savings make time limitation a popular initiative among state legislatures. At the time of this writing, the Massachusetts legislature is seeking a waiver from the federal government to implement a time limit of two years, and Utah has implemented a program which substitutes one-time cash payments for ongoing, monthly payments.[42]

C. Employer Rebate Programs

Other state programs have turned their attention toward encouraging employers to hire welfare recipients. These state programs typically use a direct method of making welfare recipients more attractive employees: they subsidize their wages by giving money directly to the employer. By offering this subsidy, such programs recruit companies to enroll in a plan that requires them to provide employment to a given number of recipients. Once these jobs are arranged, caseworkers randomly assign recipients to the program, requiring them to accept this employment.

Oregon will set up this type of employer-rebate program—entitled "JOBS

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39. Peter B. Edelman, *Toward a Comprehensive Antipoverty Strategy: Getting Beyond the Silver Bullet*, 81 GEO. L.J. 1697, 1733 (1993).

40. The current Clinton plan will, more than likely, be such a proposal. *See* discussion *infra* part I.E for further analysis.

41. *See supra* note 13.

42. *Welfare Reform: A Closer Look*, ATLANTA J. & CONST., Mar. 2, 1995, at A15.

Plus"[43]—as a six-county pilot program beginning in May of 1994.[44] This program gets funding by pooling recipients' cash benefits, food stamps and unemployment compensation; workers retain their Medicaid and child-care coverage. The program will only accept job offers from employers which pay at least $6 per hour, which usually equals a recipient's welfare benefits.[45] Virginia has also been recently granted waivers from the Department of Health and Human Services for such a program.[46] This program, however, is funded from the general state coffers, and will only accept employer job offers starting at $7 per hour.[47] This program gives participating employers a 20% rebate of the worker's salary in the first year, which drops to 10% in the second, and ends altogether at the start of the third year.[48] This program also provides worker training free of charge to the employer.[49]

These plans have a considerable advantage over previously-discussed reform efforts in that they create an economic incentive for recipients to accept work. This incentive is ensured by the fact that such programs only accept relatively high-paying employers. Such an incentive eliminates worries about "trapping" recipients in the welfare system, where their only economically viable choice is to remain unemployed. In addition, rebate programs enjoy a considerable amount of cost containment from a budgetary standpoint; only a small percentage of a recipient's income is supplied by the government, with the rest being supplied by the employer.

These advantages, however, are achieved at the cost of significant disadvantages in other areas. To begin with, it is unlikely that rebate programs can ever be an effective way to provide all welfare recipients with work. To the extent that a state controls costs by subsidizing only a small percentage of employee wages, employer interest will be lower. In addition, the wage minimums required by rebate programs often mean that welfare recipients are competing with skilled workers for such positions, which lessens employer interest in hiring relatively lower-qualified welfare recipients. For these reasons, it is unlikely that many positions could be opened by rebate programs.[50]

Even if rebate programs are successful in placing welfare recipients in the private workforce, however, two wholly different problems are created. The first such problem is that, to the extent that rebate programs can guarantee welfare recipients high-wage jobs, people earning less money would then have an incentive to quit their jobs and go on welfare.[51] A second, more fundamental problem is that if an employer offers a job to a welfare recipient through such a program, this job is simply taken away from non-recipients who would otherwise fill it. To the extent that rebate programs are successful, they directly increase unemployment in the private economy.[52] This situation

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43. 1993 Or. Laws 739.

44. Worthington, *supra* note 31. *See also, Welfare Reform: A Closer Look*, *supra* note 42.

45. Worthington, *supra* note 31.

46. Donald P. Baker, *Virginia Gets Permission to Try New Welfare Training Idea*, WASH. POST, Nov. 24, 1993, at A8.

47. *Id.*

48. *Id.*

49. *Id.*

50. As an example, Virginia is estimated to only create 600 jobs in the state through its rebate program in its first year. *Id.*

51. Linda Seebach, *That First, Awful Job Teaches Survival Skills*, PLAIN DEALER, Jan. 30, 1994, at 6C.

52. The American Federation of State, County, and Municipal Employees has expressed exactly

makes it unlikely that a rebate program will offer a long-term benefit to the welfare system, because this increased unemployment will lead to increased reliance on welfare benefits.[53] Therefore, rebate policies are unreliable as a means of achieving real budget savings.

In addition to these core problems, the Oregon plan—and plans structured in the same manner—have a tendency to erode their own funding base. This is because the Oregon plan "pools" cash benefit payments that would normally go to recipients into a fund to pay employer rebates. If such a plan is successful, recipients will eventually advance in the workplace, earning more and more income. When this happens, they qualify for less in cash assistance, which decreases the amount of money available to fund the rebate program. Therefore, a rebate program, in order to be stable, should be based on the Virginia model. These programs, however, offer little potential for creating work incentives to a large amount of people in the welfare system. In addition, the social costs of these programs may outweigh their benefits. Nonetheless, because state budgets need not cover many of these "social costs," wage subsidy programs have remained a popular option among state legislatures: Ohio plans to begin such a pilot program in five counties for the 1996-97 fiscal year.[54]

D. California's "Work Pays" Program

One particular state welfare-reform program has taken a significantly different tack than the other programs discussed above. This program has recently begun in California, and is called "Work Pays."[55] Like many programs, it seeks to provide economic incentives for welfare recipients to find work. But this program does not seek to accomplish this goal by adjusting the level of all welfare benefits across the board; rather, it adjusts the timing and amount of benefits on an individual basis, and deducts a percentage of private income from recipients in order to recoup some of the cost of welfare benefits.

This payment system was designed to overcome the work disincentives in the current AFDC payment system. Currently, when a family has been on AFDC for four months, any private income is deducted dollar-for-dollar from AFDC cash benefits.[56] Many social workers have remarked that, especially when work-related costs like transportation and child care are factored in, this payment system results in a disincentive to work.[57] This problem is compounded by the fact that, if a family ever earns wages above the income requirement—that is, the amount at which a family is disqualified

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this concern about work requirements in President Clinton's draft proposal for welfare reform. James A. Barnes, *Waiting for Clinton*, 26 NAT'L J. 516 (1994).

53. It is true, of course, that not every displaced worker from the private sector will seek welfare benefits as a result of being displaced. Most unemployed people, in fact, rely on savings, family, or unemployment insurance to get through times of unemployment. This phenomenon may lead to long-term decreases in welfare spending. To the extent this is true, however, the savings are achieved by sloughing public costs onto unemployed citizens which, by nature, do not want to be dependent on public aid. This does not make such a policy politically appealing, and indeed, would probably result in more public dissatisfaction with the welfare system. *See Id.* Therefore, rebate polices remain unreliable as a way to achieve real budget savings.

54. *Welfare Reform: A Closer Look*, *supra* note 42.

55. Mary Curran-Downey, *'It Pays to Work' Provides Incentive to Get Off Welfare*, SAN DIEGO UNION-TRIB., Jan. 31, 1994, at B-2.

56. Hopfensperger, *supra* note 22.

57. *Id.*

from AFDC—they immediately lose all cash benefits, as well as the attendant Medicaid coverage.

The "Work Pays" program changes this formula by allowing a family to keep about a third of their income without losing any cash assistance; welfare benefits are reduced for the remaining two-thirds of each additional dollar. In other words, by being privately employed, recipients are allowed to increase their effective income by an amount equal to one-third of their private income. This gives a continuous economic incentive to earn more money. In addition, the state is reimbursed for some of the cost of providing welfare benefits. This program, however, is subject to two major limitations which keep it from being a comprehensive incentive package for welfare recipients.

The first limitation of the California plan is that it contains upper limits on the amount of income families can earn and still qualify under the program. The family may only earn up to the equivalent of one minimum-wage, full-time salary per week; if a family earns more than that, they are no longer part of the program.[58] At this level of income, most families then become ineligible for any cash assistance because they exceed the income requirement.[59] Thus, an AFDC family only has an incentive to earn up to minimum wage and thereafter has the same disincentive to earn income as under the previous system.

The second limitation of the California plan is that it only pays attention to AFDC income. If a family does indeed go over the income requirement for cash assistance, they not only lose AFDC payments,[60] but also lose the attendant Medicaid and child-care benefits.[61] This results in an especially vibrant disincentive to earning more than minimum wage. This disincentive will be even more vibrant in a case where intangible benefits to a recipient are especially important. For instance, a recipient with a pre-existing medical condition will have an increased desire to keep Medicaid coverage, because the cost of replacement if he loses this coverage will be higher than normal.

The "Work Pays" program, then, offers an appealing framework for offering work incentives to welfare recipients. The limitations of this program, however, keep the incentive within narrow bounds. Additionally, this program has one other curious disadvantage. It results in a higher real income for welfare recipients earning minimum wage than for regular minimum-wage earners who have never been on welfare. This is because the program is only available to AFDC recipients, and minimum-wage earners who have never been unemployed usually have never qualified for AFDC.[62] Frustration over such disparate treatment has lead some state employees to quit their jobs in protest.[63] Therefore, California's program would probably need major revisions in order to be politically acceptable on a national level.

These political problems, however, have not kept states from following California in the area of income qualification extensions. Ohio, in addition to its employer

58. *Id.*

59. Curran-Downey, *supra* note 55.

60. *Id.*

61. Medicaid and child-care benefits lapse after one year. *See* Nancy Weaver, *New Welfare Rules Encourage Recipients to Work*, SACRAMENTO BEE, Nov. 20, 1993, at B4.

62. Such workers include the state's own entry-level employees. Curran-Downey, *supra* note 55.

63. *Welfare Reform Sorely Needed*, TORONTO STAR, Aug. 27, 1993, at A22.

rebate program, is planning to allow AFDC recipients an additional $150 per month without being disqualified, and eliminate the current 100-hour cap on the amount of work which the principal wage-earner in a welfare family may perform.[64]

E. The Clinton Plan

The Clinton administration made welfare reform a large part of its 1992 Presidential campaign. During the campaign, Clinton promised to develop a welfare-reform plan which would make welfare "a second chance, not a way of life."[65] This plan included four basic proposals.[66]

The first proposal in the Clinton plan is to "make work pay." While many of the four proposals have some effect on creating work incentives for recipients, it is this first proposal which most directly impacts on the work incentive issue. Despite its rhetorical similarity to the California plan, this element aims at creating quite a different work incentive for welfare recipients. This proposal has two major prongs; the first prong is to increase the Earned Income Tax Credit (EITC) to working families, thereby increasing the real wages of poor families.[67] This goal has already been achieved because of the 1994 budget agreement which increased the EITC and extended it to single, low-income wage earners.[68] The second prong of the "make work pay" proposal revolves around another issue: health care reform.[69] To the extent that a comprehensive health care plan can be devised that covers all Americans, the value of Medicaid benefits will no longer be an incentive to stay on welfare. At the time of this writing, however, the implementation of such a plan, at least in the holistic form envisioned before the mid term elections in 1994, is doubtful at best.[70] The defeat of this health care plan, a key part of the viability of the economic incentives under the Clinton welfare-reform plan, combined with sweeping Republican victories in the 1994 midterm elections, have been principally responsible for the lack of progress on the Clinton welfare agenda.

The second proposal would attach time limits to welfare benefits. This proposal seems to be a validation of the model state reform efforts in this area; the White House has widely endorsed the two-year time limit now imposed by New Jersey and Wisconsin.[71] Job training would be supplied during the two-year interval. Many commentators, however, had expressed doubt that the administration plan would be able to assure the public-sector jobs, which are provided at the end of the two-year limit, without a significant raise in taxes.[72] Because of the administration's desire to avoid tax hikes as a way to finance the time-limit requirement, the Clinton plan forces only those welfare recipients born after 1971 to work in public-sector jobs at the end of the two-year limit, roughly one-third of the existing welfare population.[73] Recipients would be

64. *Welfare Reform: A Closer Look*, *supra* note 42.
65. *See supra* note 1.
66. *How Welfare System Could Be Improved*, CHI. SUN-TIMES, Aug. 11, 1993, at 33.
67. *Id.*
68. David Whitman and Matthew Cooper, *Fixing the Welfare Mess*, U.S. NEWS & WORLD REPORT, Dec. 13, 1993, at 30.
69. *Id.*
70. *See infra* note 93 for further analysis.
71. William Clairborne, *White House Panel Backs Phased-In Welfare Cutoffs*, WASH. POST, Feb. 25, 1994, at A1.
72. Morgenthau, *supra* note 2.
73. *Clinton Touts $9.3 Billion Plan to Limit Welfare, Break Cycle*, MINN. STAR-TRIB., June 15,

able to retain public-sector jobs as long as they show a "good faith effort" to obtain private employment.[74]

The third proposal in the Clinton plan would require recipients to accept job training in the two-year period where benefits are offered.[75] Funding of approximately $2.8 billion would be available for job education, training, and placement[76] through the Family Support Act of 1988—a significant sum of money, but far short of a total federal funding of the program which had previously been advocated by the administration.[77]

The fourth proposal is not expressly aimed at providing work incentives for welfare recipients, but may prove to be effective in its own right and is probably the least controversial part of the Clinton package. This proposal would strengthen federal power to enforce child support orders, in order to provide more stable incomes to AFDC families.[78] Potential savings to welfare families could total eight billion dollars.[79] Specific tools advocated for the enforcement of child support include a plan to establish the paternity of all children at birth,[80] enhanced federal databanks to enforce garnishment orders,[81] and suspension of drivers licenses upon default.[82]

This combination of job training and time-limited welfare payments makes Clinton's draft proposal look very similar to the current Wisconsin program, with the exception of the provision for more safety net coverage. The advantages of the Clinton plan, then, are largely the same as the Wisconsin program, with the additional benefits of being more socially protective. Conversely, of course, the Clinton plan offers less in the way of cost containment. The cost of such a nationwide program would increase over time as a higher percentage of the welfare population is comprised of recipients born after 1971.

The Clinton plan, while devoting much energy toward the goal of making work more appealing to welfare recipients, falls significantly short of providing a truly systemic plan for welfare reform. Without a comprehensive health care package, the plan must rest solely on the EITC to provide additional incentives to work; and while an expanded EITC undoubtedly provides additional income to working recipients, this additional income will only shrink the gap between welfare income and the minimum wage, rather than eliminating it. Furthermore, the Clinton plan does not attempt to fashion any incentive that is unique to the individual welfare family. In addition, to the extent that the Clinton plan is successful in increasing child-support enforcement, a further disincentive to work may be created: because AFDC families' incomes would be raised, this will put them closer to the income requirement, and therefore allow

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1994, at 10A.

74. *Id.*

75. *How Welfare System Could Be Improved, supra* note 66.

76. Bill Nichols, *Clinton Unveils New Plan to Close 'Gap' in Welfare*, USA TODAY, June 15, 1994, at 10A.

77. David Usborne, *Bold Clinton Tackles Welfare*, U.S. NEWS & WORLD REPORT, Sept. 11, 1992, at 14.

78. George Graham, *Plan to 'End Welfare as We Know It' Bears Heavy Cost*, FINANCIAL TIMES, Apr. 6, 1994, at 7.

79. *Id.*

80. *Clinton Touts $9.3 Billion Plan, supra* note 73.

81. Mark Schlinkmann, *Wraps Off Welfare Contract; President's Plan has a Cutoff Tied to Finding Employment*, ST. LOUIS POST-DISPATCH, June 15, 1994, at 1A.

82. *Id.*

them to earn less outside income without losing benefits.

F. The Republican Plan

In the months prior to the writing of this note, House and Senate Republicans, following their decisive victories in the midterm 1994 elections, have begun to formulate their own agenda on welfare reform. At the writing of this note, the Republican plan, or Personal Responsibility Act of 1995, is still being debated in the House Ways and Means Committee, and therefore is not yet clearly defined. The ongoing legislative process, however, has revealed several principles that are likely to be part of an ultimate Republican plan. The Republican welfare-reform proposal will likely be comprised of four elements.

First, overall welfare spending by the federal government would be capped under the Republican plan. While the amount of the cap and its duration are still somewhat in flux at the time of the writing of this note, the most recent proposal would limit the total federal spending for AFDC benefits to $15 billion in each of the next five years.[83] Whether benefits would decrease across the board in order to achieve this funding level, or whether there would be some procedure for more drastically eliminating benefits to more select groups, is a determination which has not yet been made at the time of this writing.

Second, the Republican plan will almost certainly involve the pooling of federal direct payments into funds which will be directly transferred to individual states as "block grants," to be distributed under much less restrictive federal regulations. Under one recent proposal, all federal spending would be pooled into one of three such block grants.[84] The popularity of the "block grant" concept may have come under scrutiny in recent weeks, with the advent of a proposal to limit state control of food stamp grants to only those jurisdictions which institute an electronic food stamp program.[85]

Third, the Personal Responsibility Act will almost certainly include a provision which would deny cash payments for unwed mothers under the age of eighteen. Although part of the Republican Party's original "Contract with America," this provision has probably been the most controversial of the four proposals. Recent negotiations may result in a compromise which allows such women to receive benefits upon turning 18.[86]

Fourth, federal block grants would be integrated under the Republican plan into a state incentive program for reducing illegitimate childbirths. Under this system, states would be given a five percent increase in welfare grants if they are able to lower their "illegitimacy ratio"[87] by one percent over the previous year.[88] The support for this particular calculation has yet to be tested by Congressional vote, but a Republican effort at welfare reform will almost certainly include some economic incentive for

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83. Leslie Philips, *House GOP Puts Some Dents in its Tough Welfare-Reform Plan*, USA TODAY, Mar. 1, 1995, at 4A.

84. *"Contract with America": A Status Report*, HARTFORD COURANT, Feb. 21, 1995, at A7.

85. Phillips, *supra* note 83.

86. *Id.*

87. This ratio would be calculated by computing the number of out-of-wedlock births plus abortions as a percentage of total live births. This ratio has its own peculiar political etymology. *See Rube Goldberg's Ways and Means*, WASH. POST, Mar. 3, 1995, at A24.

88. Barbara Vobejda, *Abortions, Out-of-Wedlock Births Targeted; House Republicans Propose State Bonuses for Reductions*, WASH. POST, Mar. 1, 1995, at A14.

states to make progress on the issue of illegitimate childbirths.

In addition to the above elements, the most recent Republican plan would use the influence of block grants to create incentives for states to reduce their welfare expenditures; under this proposal, any savings that a state incurs may be kept by that state and placed in a fund for emergencies.[89] After this fund exceeds a certain level, savings may be used for any state purpose.[90]

The Republican welfare reform proposal, much like the Clinton proposal, fails to create a systemic plan for encouraging welfare recipients to work. Indeed, most of the Republican proposal concentrates on behavior modification issues, rather than work incentive issues. The only part of the Republican plan which specifically encourages an increase of employment rates does so indirectly, by passing the incentive for reducing welfare rolls onto the states. The policies which a state should implement in order to achieve higher employment, then, must still be developed. Part II attempts to create such a system, incorporating the strengths of each reform initiative which have been tried by individual states.

II. A COMPREHENSIVE SYSTEMIC APPROACH

Because all the state and federal plans discussed above have at least one significant shortcoming—either by failing to provide a continuing incentive to seek private employment, by taking away the important safety net for truly needy families, or by failing to provide these goals at an acceptable cost—it may seem difficult to fashion a welfare-reform plan which achieves all of these goals. Previous reform proposals, however, can be modified in a way that allows all three of these goals to be achieved. Specifically, the author of this note believes that the basic formula of California's "Work Pays" program, which allows a welfare recipient to keep a part of his private income, can be used as a base for a comprehensive welfare-payment system that not only offers continuous incentives for recipients to become employed, but also does this at a minimum of governmental cost, and does not jeopardize the safety net for each family. The California plan, however, suffers two major flaws which keeps it from being such a comprehensive approach. Reviewing the major flaws of the California plan, then, will provide a convenient point of departure for outlining the framework of new, comprehensive system.

A. "Total Benefit Package"

One major flaw in the California plan is that it only allows private income to be earned to offset AFDC cash payments. Therefore, if a family exceeds the income requirement, they are totally unreimbursed for the intangible costs of going off welfare. This results in a disincentive to earn any more than minimum wage.[91] Since this plan does not quantify the intangible aid given to a welfare recipient, it can only formulate an imperfect incentive structure.

This example illustrates how important it is to quantify the exact amount of benefits a person receives from being on welfare, whether in the form of tangible cash payments, or intangible services. Without information about the exact value of all the individual forms of aid a person receives under a welfare package, it is impossible to

89. Phillips, *supra* note 83.
90. *Id.*
91. *See* discussion *supra* part I.D for a complete analysis.

know exactly what economic incentives lead this person to remain on welfare. Therefore, it will be impossible to generate a coherent payment plan which overcomes these incentives. In other words, we need a formula to determine the "total benefit package" under a welfare system's many forms of aid. Needless to say, the amount of benefits given to any individual or family depends on which state they live in, as well as individual financial circumstances. But determining any single family's total benefit package can be accomplished by calculating the dollar value of each benefit which the family receives as a result of being on welfare. In order to accurately determine the incentive that such a package provides to remain on welfare, the value of each benefit should be measured from the recipient's point of view.

This package is not as difficult to develop as it might seem. Some benefits under welfare are easily valuated. Cash payments under AFDC or SSI, for example, are obviously worth their face amount: a cash payment of $500 per month is worth $500. Food stamps, although not precisely cash payments, can be valuated in much the same way. Although food stamps technically are more limited in their use than pure cash, their face value is the same as cash for its limited purpose.[92] Therefore, the real value of food stamps to a recipient is functionally the same as cash, and should be treated as such.

It is more difficult to measure the value of intangible services to a welfare family, but still not subjective. Intangible services can include many forms of direct aid, depending on the state; however, Medicaid coverage, child support services, food stamps, and housing assistance are the most common services which welfare families receive directly. Each of these services should be valuated slightly differently in order to accurately reflect what economic benefit is being given to the welfare family.

Medicaid insurance is probably the most difficult benefit to valuate in objective dollar terms. The value of medical coverage under Medicaid is relative to the medical condition of every family; a family with chronically sick members will naturally use Medicaid more often, and hence, the value of this coverage is greater in dollar terms. In addition, the use of medical services in every family fluctuates from month to month; even preventive care is not evenly distributed during flu season, or during a pregnancy. However, the value of medical services can be given a uniform, monthly cost if it is not measured in terms of medical services used, but rather in terms of what it would cost to obtain private medical insurance which is comparable to Medicare. This number, to be sure, will be different for each family; but, by determining what the cost of medical coverage in the private market is, a welfare system can attach an objective, stable cost on the value of Medicaid. In addition, this method most accurately reflects what a family's cost would be if it lost Medicare, because a family does not simply lose medical services if it loses Medicare, but it also loses the ability to distribute those costs evenly over time. Therefore, the value of Medicaid insurance should be measured in terms of the money it would cost to obtain comparable private medical insurance.[93]

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92. Since 1977, recipients have no longer been required to buy food stamps for a cash amount below their face value. For a treatment of the Food Stamp Act's history, see Karen Terhune, *Reformation of the Food Stamp Act: Abating Domestic Hunger Means Resisting "Legislative Junk Food"*, 41 CATH. U. L. REV. 421 (1992).

93. It should be noted here that as of this writing, President Clinton's health care reform legislation has been effectively defeated, with current administration efforts being devoted to piecemeal re-

Child-care is not provided by all states to all welfare recipients. Although the Family Support Act of 1988 allowed states to require mandatory job-training classes as a part of a welfare package as long as child care was also provided,[94] few states have had the funds to support these types of programs to a significant degree.[95] Even among states which offer child-care assistance, however, the method of valuation will be different. This is because some states directly provide child care to working welfare parents, while others provide cash stipends to working parents in lieu of actual services. If a state offers actual child care services, the most accurate measure of the worth of these services is the cost of this child care in the open market. A market price for these services can be easily computed for most regions of the country; if private day care is not readily obtainable in a region, however, the amount a public facility would charge private individuals may become the most relevant figure. If a state provides a cash stipend, of course, the value will be the simple amount of the stipend.

The last major service which is provided directly to many welfare recipients is housing assistance. These programs typically operate by providing selected welfare recipients an apartment at a HUD-owned facility at a subsidized rental rate.[96] Additionally, many other federal and state housing programs exist.[97] The actual economic benefit to the welfare recipient, then, can be most accurately measured by estimating the cost of private rent at a comparable facility, after subtracting the amount of subsidized rent.

Other services may be given to welfare recipients under less commonplace federal or state programs.[98] Any of these services, if given, need to be valuated to determine their objective worth to the individual recipient. Although measured from the recipient's viewpoint, these valuations need not be completely subjective. As with food stamps, child care and medical benefits, a workable valuation can be achieved by assessing the replacement cost of these services in the area where the recipient lives. This methodology gives a reasonably accurate picture of the total economic incentive which a recipient has under the welfare system to remain unemployed.

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form, primarily in the area of insurance for pre-existing medical conditions. For analysis as to the reasons behind the defeat of this legislative agenda, *see generally* Senator Paul Coverdell, *Substance Defeated Health Care Reform in 1994: Substance Should Be the Basis of Any Effort in 1995*, 21 J. LEGIS. 81 (1995) and Robert Schmuhl, *What Happened To Health Care Reform—An Outsider's View*, 21 J. LEGIS. 85 (1995). Should a comprehensive health care bill be passed into law which covers all Americans regardless of their status as welfare recipients, then the cost of publicly-provided health care benefits would not be included as part of a 'total benefit package' under any welfare plan. This is because having medical coverage would not depend on remaining on welfare, and therefore would not be an economic incentive to do so. The potential for passage of such a plan in the future, however, is speculative. Unless some comprehensive reform becomes law the medical benefits provided under Medicaid are a strong incentive to remain on welfare, and should therefore be included in the 'total benefits package.'

94. 42 U.S.C. § 602(g)(1)(A)(i)(II) (1988). *See* Alan W. Houseman, *The Legacy of Goldberg v. Kelly: A Twenty Year Perspective: The Vitality of Goldberg v. Kelly to Welfare Advocacy in the 1990's*, 56 BROOK. L. REV. 831, 856 n.82 (1990).

95. Hopfensperger, *supra* note 22.

96. Michael H. Schill, *Privatizing Federal Low Income Housing Assistance: The Case of Public Housing*, 75 CORNELL L. REV. 878, 885 (1990).

97. *Id.*

98. Examples in this area would include, but are not limited to, school-lunch programs, WIC benefits, and benefits under state programs.

B. Two Models

Once we have defined the worth of the total benefit package offered to recipients of welfare benefits, we have accurately identified the economic incentives which a system offers for remaining on welfare. From this base, we can begin to formulate a payment system for welfare benefits which will continually offer an economic incentive to earn private income, and eventually end the need for public assistance. This author of this note believes that such a payment system can be constructed by using the technique employed by the California "Work Pays" plan: namely, the process of allowing welfare recipients to keep a percentage of their private income, with the remainder going to the state through a reduction in benefits.

Under the California plan, however, this process did not lead to a comprehensive incentive for a welfare recipient to earn additional private income. This flaw resulted from the fact that the California plan set its income requirement—the amount of income at which a family is disqualified from welfare—below the monetary value of the welfare benefits in that state.[99] Blending this observation with our previous analysis, we can determine that any welfare system which disqualifies a family for welfare at an income level below the total benefit package will necessarily offer a disincentive to earn additional income. Conversely, we can conclude that in order to offer a continual incentive for its recipients to earn additional private income a welfare system must place its income requirement above the level of the total benefit package it offers. To the extent that the income requirement exceeds the total benefit package, the state can offer an incentive for families to earn private income by allowing them to keep a portion of this income.

As an example, assume the California plan offered a given welfare family $500 per month in cash assistance. Also assume that the plan will not disqualify a family for assistance until it reaches a total income of $1,000 per month; up until that point, the family will be able to keep 50% of any private income it earns without experiencing a cash benefit reduction. Such a system would always give the family a larger "real income"—the amount of earnings when added to cash payments—regardless of how much money they currently earn. I will, for purposes of convenience, call this payment structure Model "A."

Model "A"

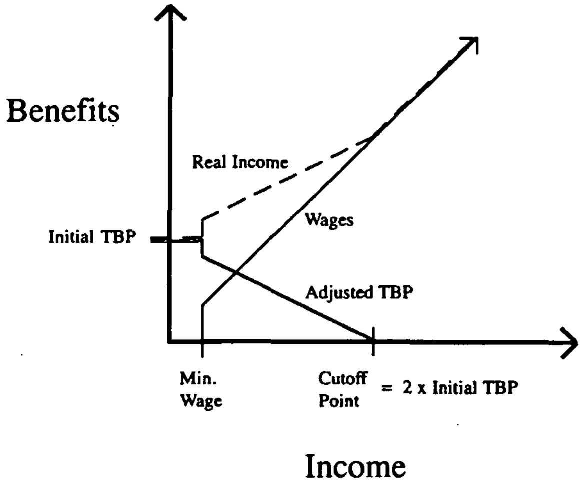
Private Income	*Total Cash Payments*	*Real Income*
$0	$500	$500
$100	$450	$550
$200	$400	$600
$500	$250	$750
$750	$125	$875
$800	$100	$900
$1000	$0	$1000

Beyond $1000 in private income, the family receives no welfare payments which need to be offset, so they will keep 100% of any additional income. Beyond this "cutoff

99. *See* part I.D for a complete analysis.

point," of course, the family has worked itself off of the welfare rolls.

A simple graphical analysis of the same model would look like



Under this model, we can make the additional observation that the income cutoff point for welfare eligibility needs to be set at twice the total benefit amount in order to provide a continuous incentive. For instance, under Model A, if the income requirement were set at $800, a family earning this amount would be disqualified for cash benefits, and therefore have a real income of $800. But a family earning only $750, for instance, would have a real income of $875. Setting the income requirement at a dollar amount less than twice the total benefit package, then, would provide welfare families a disincentive to earn more than the income requirement.[100] Stated another way, the income requirement should be placed at a level where the deducted percentage of a family's income equals the amount of cash assistance.

Under Model A, we could, theoretically, achieve the same incentive by keeping cash benefits at the same level, and then charge a family for a percentage of its private wages. For cash payments, however, this would be a cumbersome policy, considering that the state has the ability to achieve the same incentive in one step by reducing cash benefits at the outset. However, when considering the other type of benefits which are usually included in a state's total benefit package—i.e., direct services—charging a family would seem to be more efficient. For instance, if a family is receiving Medicaid as a part of their total benefit package, it would be difficult to reduce insurance coverage for the family only in part. Possibly, there could be an increase in deductibles or

100. This is only true because, under Model A, we have assumed that a family may keep 50% of their private income without losing corresponding cash benefits. We can easily choose a different percentage, however, which would affect the level at which we can set an income requirement. For instance, if, under Model A, we assume that a family may only keep 25% of its private income without a corresponding benefit reduction, then an income requirement could be set at a $666.67 (because after taking 75% of this amount, the state has been fully paid for its $500 in cash assistance). The crucial point to grasp here is that to the extent a welfare system allows a recipient to keep a smaller percentage of income without benefit reductions, it will have to pay benefits to a smaller class of income groups (thereby reducing costs). To the extent it allows a recipient to keep a larger percentage, it will offer a more virulent incentive to earn additional private income.

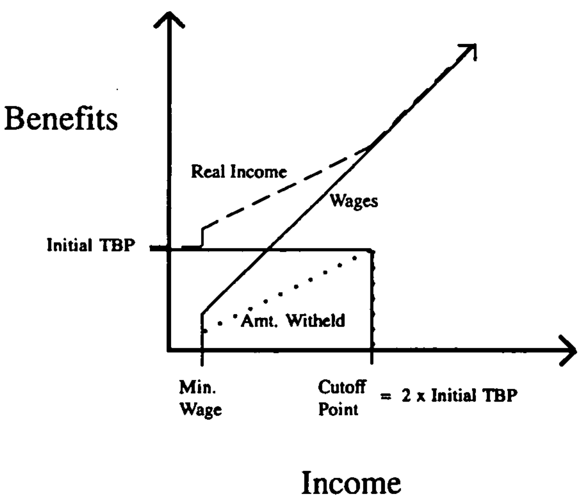
co-payments, with an expectation that a family would then buy supplemental insurance, but such a system would be difficult to manage. It would be more efficient, then, to charge a family a percentage of their private income in exchange for the entire service being provided. Under such a system, total benefits would remain the same until the point at which a family becomes income-ineligible. As the family's income grows, the greater income will eventually pay for these services.

As an example, let us assume a given family receives Medicaid under a welfare plan which would cost $5000 per month to replace in the private market. In addition, they receive $250 per month in child-care services. Additionally, assume again that the family is allowed to keep 50% of its private income before welfare is reduced. Such a payment plan, which I will call Model "B," would appear as below:

Model "B"

Private Income	*Value of Services*	*Amount Paid For Services*	*Real Income*
$0	$750	$0	$750
$100	$750	$50	$800
$200	$750	$100	$850
$500	$750	$250	$1,000
$1,000	$750	$500	$1,250
$1,500	$750	$750	$1,500

At the point where the amount paid by the family pays for these services in full, the family would then become disqualified. Provided the value of these services has been calculated correctly, the family should have no disincentive to earn income beyond this income requirement. A graphical analysis of this model would look like



Since government welfare benefits include a mix of several services, however, the state could adopt an alternative, staggered disqualification system. For instance, when the family's monthly income reaches $500—and therefore their amount paid for services fully pays for the value of child-care benefits—the state could disqualify the family for child care benefits, while retaining their eligibility for Medicaid. In such a case, the state would allow the family to keep all of its income up to $500 per month. If income rises further, half of the additional income would be used to offset Medicaid costs. Such a "staggered" disqualification system could be used to impart a significant amount of flexibility to the welfare system; the family could be allowed to choose which service it would like to pay off first, and which it would like to keep the longest.

Of course, the typical welfare package for a real family in any state will include some form of cash payment, such as AFDC or SSI, as well as services like Medicaid, housing assistance or child-care. A functional approach, then, would combine Models A and B.[101] Under such an approach, when a welfare family begins to earn income, the full income will be kept by the family, and a percentage of this amount will be deducted from cash assistance. When cash assistance is fully depleted, the family will begin paying a percentage of its additional income to the government in compensation for services. At some level of income, the family will become ineligible for any assistance. This income requirement would be twice the amount of the total benefit package the family receives.[102]

III. THE CASE FOR A SYSTEMIC APPROACH

Such comprehensive federal legislation offers the best hope of integrating the current plethora of state and federal welfare programs into a true welfare "system." This approach would enable local governments to account for all of the different benefits to which a recipient is entitled, and incorporate these benefits into a payment plan which offers a continuing incentive to work. Precisely because this type of legislative change is so broad-ranging, however, it would necessarily have effects in a number of other areas. In addition, many other state welfare-reform proposals have implications for the practicability of such a systemic plan. This section attempts to discuss the interaction between a systemic payment plan and other governmental issues, both inside and outside of the welfare-reform context.

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101. Although a typical welfare package includes both cash payments and services, I include Model A as a separate entity because in the future, it may be implemented in some states. Many commentators argue that a welfare program should only provide assistance in the form of cash, allowing families to buy services in the private market. This would shift administration costs to the private economy, which would increase efficiency. *See* Donald M. Fraser, *Streamlining Welfare Programs*, WASH. POST, Jan. 9, 1977, at Outlook Section, 1 (discussing the plan of former House member Martha Griffiths). *See also* Linda E. Demkovich, *Another Chance for Welfare Reform*, 11 NAT'L J. 404 (1979) (discussing the Carter administration's plan to fold most direct services into cash payments). This is unlikely to become policy in any state as long as Medicaid is part of a standard welfare package, because of the high cost of private insurance. However, should a comprehensive health care insurance plan be passed under the Clinton administration's initiative, medical insurance need no longer be part of a 'total benefits package' (*see supra* note 93 for further analysis). This may allow states to shift completely to a cash-based payment method.

Conversely, I include Model B as a separate entity because many people object to cash payments on the grounds that welfare recipients disproportionately use these resources for drugs or alcohol. *See* Sally Jacobs, *General Relief Called Vital, Lax; Changes Would Tighten Standards*, BOSTON GLOBE, May 13, 1991, at 1. This may lead to a different trend in state payments, toward providing more direct services in lieu of cash. A system that totally relies on direct services for recipients' support, though, would most likely be impractical.

102. Again, assuming the family is allowed to keep 50% of their earnings without a reduction in benefits. *See supra* note 100.

A. Compatibility with Other Welfare Approaches

When given waivers by the Department of Health and Human Services to initiate welfare-reform proposals contrary to federal regulations, individual states have exercised considerable ingenuity. These proposals can be divided into two broad categories: those plans which attempt to offer welfare recipients an incentive to work in the private market, and those plans which attempt to put some type of behavioral requirements on recipients. It should be examined whether a systemic payment system would be compatible with these state reforms.

1. Work-incentive programs

The specific state programs which attempt to give work incentives to welfare recipients have been discussed in some depth in Part I. Thus, a detailed discussion of these programs will not be repeated. However, the three basic types of these programs need to be examined in order to determine their compatibility with a systemic payment approach. The type of program which most closely resembles a systemic payment approach, of course, would be a program which allows a welfare family to extend the amount of income it earns while not becoming disqualified for benefits. The "Work Pays" program in California would be an example of such a program. In a sense, this type of system is actually a subset of a systemic payment approach; these programs extend a family's income requirement, but do not extend it above the total benefit amount offered to the family. A systemic payment approach would necessarily extend the income requirement above the total benefit amount. So, a program similar to "Work Pays" is automatically incorporated under a systemic payment approach. The need for such a separate program, then, would disappear if a systemic approach were adopted nationally.

The most common type of work-incentive program which has been adopted on a state level involves a time-limit to welfare benefits. Similar to the core of the Clinton plan, these programs keep a recipient from receiving welfare after a certain time—usually two years. Within that time, job training is offered as a benefit. Such an approach is compatible with a systemic payment approach. While a family receives welfare benefits, its payments can easily be calculated under a total benefit package. The value of job training would need to be included under this package, but otherwise there are no barriers to applying such a formula. Within the two-year time limit, then, a constant incentive to acquire private employment can be as easily implemented as under the current system.

Under this type of program, however, states treat recipient families differently at the end of the two-year period. Some states, such as Wisconsin, guarantee no private or public employment.[103] Other states, such as New Jersey, offer public employment at minimum wage if a recipient cannot find private employment.[104] Both of these systems obviate the need for a systemic payment approach after the two-year limit, because no actual welfare payments are distributed.

However, these programs have been criticized for failing to offer an adequate

103. *Help or Hurt?; Welfare Recipients Wary of Experiment*, *supra* note 33.

104. David Whitman, *Honey, I Shrunk the Welfare Reform Plan*, U.S. NEWS & WORLD REPORT, Mar. 21, 1994, at 37.

safety net, especially to large families.[105] A likely element of the upcoming Clinton plan, therefore, will be to continue welfare payments—which are adjusted for the size of the family—to a substantial portion of recipients.[106] A systemic approach can still be useful in this situation. To the extent a family is offered a minimum-wage public service job by the government, this income could be treated as private income, and the family could be allowed to keep a percentage of this income without a reduction in benefits. If the Clinton plan allows an individual family to continue receiving welfare benefits after the two-year limit, however, a "workfare" program may be more appealing than applying a systemic payment approach to public-service income; from a cost containment standpoint, it would save money to simply require these families to do public-service work in exchange for benefits, rather than give these benefits and allow the family to also keep half of its income. Also, a guaranteed minimum-wage income from public employment would take away any economic incentive to take a private, minimum-wage job. Therefore, placing a family in a workfare program after a time-limit would offer greater cost containment than allowing a family to keep benefits while working at minimum wage for the government. In any event, whether or not a recipient family is placed in a workfare program or a minimum-wage public service job after the job training time limit, a systemic payment approach can still be used once the family begins to earn private income.

Programs like Wisconsin's Project New Hope—which require recipients to work a certain amount of hours per week in order to receive benefits—operate in much the same way as time-limit programs. The only substantive difference is that there is no interim period in which recipients receive job-training before they are forced to work. A systemic approach would be just as compatible with this project as with time-limit programs. In fact, a systemic approach could ameliorate the most significant shortcoming of this type of project—cost containment—because a portion of private income is used to offset benefits.

The last type of work-incentive program used by states is a wage subsidy—like the Oregon and Virginia plans—which gives welfare cash payments to a private employer. This type of program, if successful, would obviate the need for a systemic payment approach. This is true because when recipients are placed in a job that pays a sufficiently high minimum salary, their income will hopefully be high enough to compensate them for the loss of all welfare benefits, while becoming income-ineligible for assistance. If a recipient does not make enough to be income-ineligible, however, a systemic approach can easily be used in conjunction with employer subsidies; the state can still make payments to employers in order to facilitate a recipient's private employment, and then deduct the recipients' benefits by a portion of salary earned under the program.

2. *Behavior-modification programs*

Various state welfare-reform proposals have been adopted since 1988 which attempt to modify the behavior of welfare recipients. Rather than focusing on work incentives, these plans focus on other goals, such as increasing school attendance, improving prenatal medical care, or decreasing alcohol or drug abuse among welfare

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105. Edelman, *supra* note 39, at 1733.
106. Whitman, *supra* note 104.

recipients.[107] These programs typically reduce welfare benefits when a recipient does not participate in a given program, or refuses to go to school or to the doctor. The desirability of such programs has been questioned by many commentators.[108] A complete discussion about the relative merits of such programs is beyond the scope of this note. However, if a state chooses to develop such programs, it should be noted that they can be operated in conjunction with a systemic payment approach. Cash payments can be independently reduced for a family which does not qualify under these programs, which would simply lower the total benefit package of a recipient. Alternatively, for working welfare families, the percentage of income that can be kept without a reduction in benefits can also be reduced. Either method, or both, can be used to ensure compliance with behavioral requirements, while keeping a systemic payment approach intact.

B. Child Care

A systemic payment approach, while consistent with most other welfare-reform proposals, will not be compatible with some welfare policies now in place in some states. Such policies do not make a systemic approach impossible, but may decrease its efficiency in offering true incentive to seek private employment.

The first policy which is relevant in this regard is the supply of child-care services. States vary widely in the amount of child-care services offered to welfare recipients.[109] Not providing child care as part of a total benefit package effectively offers an economic disincentive to work, because the costs of child care will have to be borne by recipients only if they work. If a recipient stays at home, child care is, of course, not normally needed. The costs of child care are great, especially in relation to a minimum-wage income; estimates place the cost of child care at $3,000 to $5,000 per child per year, depending upon the area of the country concerned.[110]

Providing child care within a total benefit package, on the other hand, will remove this disincentive; the costs of child care are shifted from the recipient to the state. Under a systemic payment plan, the recipient can begin repaying the state for this service from a percentage of private income. It should be noted, of course, that a failure to provide child care as part of a welfare package does not have a uniform disincentive on all recipients; some families are able to avoid child care costs by relying on relatives or friends as caregivers. So, a systemic payment system can be used even in states which do not provide child care, and it can be effective in providing a continuous economic work incentive for some people. But it is clear that if states choose to not provide child care as part of a welfare package, a systemic approach will, on average, only be mildly effectual in encouraging recipients to accept low-paying jobs.

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107. For a discussion of recent programs in this area, *see* Elizabeth Neuffer, *supra* note 16.

108. *See* Lucie E. White, *No Exit: Rethinking "Welfare Dependency" from a Different Ground*, 81 GEO. L.J. 1961, 1963 (1993).

109. For an account of state programs, *see* U.S. Dep't of Labor, Child Care: A Workforce Issue 57-124 (1988); *See also* Children's Defense Fund, State Child Care Fact Book (1987).

110. Shogren, *supra* note 6.

C. Cost

Of course, state legislatures do not exclude child care from a welfare package with the intent of providing disincentives to work. The primary motive in limiting access to child care is to contain cost. In ameliorating the cost of child care services, a state legislature which incorporates a systemic approach with a workfare system—i.e., requires recipients who have, as yet, not obtained private employment to work for their benefits—might consider using welfare recipients as child care providers. This would provide essentially "free" labor for child-care programs offered to other recipients.

Cost, however, is not a concern limited to child-care services. Cost is an overarching concern in implementing any new welfare system. Implementing a systemic payment approach only involves one new cost to the welfare system, but this cost is a major one. Any systemic approach must, by definition, extend the income requirement—that is, the amount of income at which a person is ineligible for any assistance—beyond the amount of the welfare system's total benefit package. Currently, of course, this income requirement in every state is placed significantly below this amount; extending benefits to people in these higher income groups entails a large cost. This admittedly large cost is ameliorated, however, by a number of factors.

First, a systemic payment approach can be utilized no matter what level of benefits is offered by the government. If cash payments or related services need to be cut for cost reasons, this does not affect the viability of a systemic approach; indeed, a lower level of overall benefits can offer an even more vibrant incentive to seek private employment, because it makes a minimum-wage job relatively more appealing.

Second, the percentage of recipient income which results in corresponding decreases in the total benefit package can be adjusted up or down. This note has, until now, assumed that the government would deduct 50 cents in welfare benefits from every recipient who earns an additional dollar in private income. This amount is arbitrary, of course, and can be set at any level. As long as the government does not deduct a recipient's earnings dollar for dollar, such a recipient will always have some economic incentive to earn more private wages. If the government decides to deduct benefits at a higher percentage, this policy would have two effects. It would increase the rate at which the government is "reimbursed" for the welfare benefits it gives out, which would, in turn, decrease the income level at which recipients would completely pay for their benefits.[111] Additionally, it would decrease the incentive for recipients to earn private wages, because such recipients would effectively be able to keep less of their earned income. Conversely, of course, a lower deduction schedule would increase the amount of private salary which a recipient effectively keeps, increase this recipient's incentive to earn private wages, decrease the rate at which the government is reimbursed, and increase the income level at which a recipient becomes eligible for benefits.

Third, costs may also be contained under a systemic payment plan simply because of the fact that such a system provides a continuous incentive to earn more private wages across all income levels. Such savings accrue to the government both in those cases where recipients have relatively low as well as high levels of income. For

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111. At this point, of course, the recipient becomes ineligible for benefits. *See supra* note 100 for further analysis.

instance, under non-systemic welfare payment systems, when recipients earn income below the level which would disqualify them for benefits, the government incurs the entire cost of the benefits paid to that recipient. In contrast, under a systemic payment plan, the same recipients will pay at least a portion of their private income in return for this package of benefits. This contribution, of course, would continue under a systemic plan as recipients earn income above the disqualification level, until they earn enough to fully pay for their benefit package. By contrast, non-systemic plans provide an incentive for recipients to reject offers to work for slightly above the disqualification level; therefore, the government under a non-systemic plan incurs costs by keeping recipients in the welfare system who would normally be in the private workforce. The savings of a systemic plan at higher income levels, then, arise principally from the avoidance of opportunity costs in the workplace, including the hiring, promotion, and on-the-job training of potentially employable recipients.

More intangible savings can be obtained through reducing strains on the welfare bureaucracy. Clearly, a systemic approach entails some new bureaucratic costs; case workers will need to update information at reasonable intervals concerning local prices for services that welfare offers, in order to calculate each recipient's total benefit package. However, this cost would be outweighed by other bureaucratic savings. In states that require recipients to actively participate in job searches, less oversight will be needed to force such compliance if an economic incentive is given. States that offer job training to unemployed recipients for the first two years of welfare will reduce spending on these programs, since recipients will no longer have an incentive to remain unemployed during these two years. Conversely, states which require participation in public-works job programs will not spend as much in developing these types of programs.[112]

D. The Problem of Undeclared Income

Closely related to issues of cost is the issue of undeclared income in the welfare system. Because benefits are reduced as a recipient's income rises towards the income requirement, and because today's welfare system cuts off all benefits at income levels above this requirement, recipients always have an incentive to hide income from the government that they actually earn. Recent studies have revealed that the largest single incidence of fraud in the welfare system involves concealing income from welfare caseworkers.[113] When income is not reported to the government, it causes excess payments be paid out, which costs the government money.

Ultimately, of course, it is virtually impossible to design any system which gives people economic incentives to report income to the government. Short of creating a welfare system which provides more benefits as income increases, people will always have an economic incentive to convince the government that they are earning less. This is as true for private taxpayers as it is for welfare recipients; taxpayers reduce their payments if they can reduce their declared income, and welfare recipients can keep their benefits by not declaring their private income. People who do report income, therefore, are motivated by non-economic concerns; either they have a genuine

112. *See supra* note 28.

113. Larry Leaman, *Orange County Voices: Low-paying Jobs Factor in Welfare Fraud; For Aid Recipients with Children, Accepting Aid is a Step Backward*, L.A. TIMES, Jan. 28, 1994, at B-11.

desire to be honest with the system, or they are afraid of punishment. A systemic payment approach helps on both these fronts. People are more likely to be honest with a system which they perceive as ultimately fair; to the extent a systemic approach gets rid of the economic "punishment" for people who earn slightly above the income requirement, this new system should be perceived as more equitable. Recipients should experience less frustration with the system, and be more likely to report income. It is unlikely, of course, that people already concealing income would become converts; but to the extent that a systemic approach would encourage less people to begin the process of hiding income, it will decrease this problem over time.

A systemic approach can also aid in the apprehension of recipients who do not report income. This is because employers will, on average, be more willing to report a recipient's income for tax purposes—by filing a W-2 form—if they know that their employee will not lose real income for having received a raise. If the tax income reporting system can be effectively integrated with the welfare income reporting system, this increased compliance would uncover more welfare recipients who do not report their taxable income to welfare agencies.

To the extent a systemic payment approach is incorporated with a workfare program or a program which requires acceptance of a private job, the problem of unreported income is also reduced. The reason for this is simple: when a recipient is forced to have one job in order to qualify for benefits, this takes away from the time available to acquire additional income that may be concealed. Of course, the problem is never totally eliminated; recipients could still work part-time or at night while not reporting income. But since workfare and private-job programs take up the normal working hours of a recipient, the potential for this kind of abuse is very much diminished.

E. Effect on the Minimum Wage and the EITC

A systemic payment approach also has an important budgetary effect, when looked at from a national perspective. Costs for national expenditures in welfare can be easily reduced by changes in the minimum wage. This is because to the extent the minimum wage is increased, payments for recipients who have jobs increase, and therefore the percentage of this income which goes to state and national governments is also increased, while benefits remain the same. In these days of constant budgetary pressure, this would result in a constant incentive for the federal government to raise the minimum wage.

Whether raising the minimum wage is economically sound policy is one of the more hotly debated questions in economic circles. Proponents of a high minimum wage typically cite the advantages of bringing more purchase power to poor working families.[114] Opponents usually counter that higher minimum wages increase the cost of employees, therefore making capital investment more attractive and increasing unemployment.[115] Recent empirical studies have challenged this notion, finding little if

114. *See* Marc Linder, *The Minimum Wage as Industrial Policy: A Forgotten Role*, 16 J. LEGIS. 151, 153 n.13 (1989) (quoting Milton Friedman's summary of this issue).

115. *See* David Neumark and William Wascher, *Employment Effect of Minimum and Subminimum Wages: Panel Data on State Minimum Wage Laws*, 46 INDUS. & LAB. REL. REV. 55 (1992) (concluding that a 10% raise in minimum wage results in a 1-2% drop in employment among teenagers, and a 1.5-2% drop in employment among young workers); for a summary of older studies in this regard, *see* Linder, *supra* note 115, at 154 n.22.

any effect on unemployment when the minimum wage is increased.[116] A definitive treatment of this issue is clearly beyond the scope of this note. However, it should be mentioned that if increases in unemployment do, in fact, begin to outweigh the welfare savings to the federal government, increases in the amount of people receiving welfare assistance will put a further drag on the national budget. This puts a limit on the extent to which the federal government will raise the minimum wage.[117]

The Earned Income Tax Credit, when increased, achieves a similar budgetary effect. To the extent that tax liability is decreased for low-income families, the real wages of these families are increased. This offers families more incentive to have minimum-wage jobs. To the extent that people move off welfare rolls because of this incentive, welfare expenditures drop. Raising the EITC would have only an indirect effect on the budget, however; only if its work incentive succeeds in getting a recipient off of welfare do benefit costs go down. In addition, reducing the EITC directly reduces government income. Therefore, the possibility that Congress would raise the EITC in order to lower the deficit is more remote than the possibility of raising the minimum wage.

IV. CONCLUSION

The current way in which the government arranges welfare payments creates a systemic disincentive for recipients to enter the private workforce and earn income above a state's income requirements. Various state reform proposals try to get around this fact, either by forcing a recipient to work after some time, or effectively increasing the income requirement for people already on welfare. However, none of these current proposals effectively deal with the underlying disincentive in a way that creates an incentive for people at all income levels to earn more wages, provides an adequate safety net for poor families, and results in acceptable cost containment from a governmental standpoint. Such a systemic payment plan can, however, be devised. If income requirements are increased above the total benefit package that a welfare program offers, then a system can always be constructed that gives incentives to earn additional income, by allowing a recipient to keep a percentage of this income without corresponding benefit reduction. The additional costs of this system can be mitigated by savings that such a plan creates. Such a plan is compatible with most other ideas about

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116. *See* Stephen Machin & Alan Manning, *The Effects of Minimum Wages on Wage Dispersion ad Employment: Evidence from the U.K. Wage Councils*, 47 INDUS. & LAB. REL. REV. 319 (1994) (finding no change to a slight increase in hiring for industries subject to the minimum wage in Britain); Lawrence F. Katz & Alan B. Kreuger, *The Effect of the Minimum Wage on The Fast-Food Industry*, 46 INDUS. & LAB. REL. REV. 6 (1992) (finding decreased wage differential, increased employment, and unaffected product cost in fast-food industries after increase in minimum wage); David Card, *Using Regional Variation in Wages to Measure the Effects of the Federal Minimum Wage*, 46 INDUS. & LAB. REL. REV. 22 (1992) (finding no further decrease in school attendance or employment among teenagers in states which had a lower minimum wage than others prior to the increase in the federal minimum wage, while finding real wages increased at a greater rate in those states); David Card, *Do Minimum Wages Reduce Employment? A Case Study of California 1987-89*, 46 INDUS. & LAB. REL. REV. 38 (1992) (finding no relative loss of teenager employment in California while it had a higher minimum wage than other states, while finding a disproportionate wage increase).

117. It should also be mentioned that this limit does not necessarily mean that Congress would have an incentive to set the minimum wage at a socially productive level. Not every unemployed person applies for welfare benefits. Most, in fact, rely on unemployment insurance, savings, or family to get through times of unemployment. This means that an increased minimum wage might lead to increased unemployment in society which is not wholly reflected in budgetary costs.

welfare reform that are being implemented today.

*William P. Tunell, Jr.**

ADDENDUM

Since the original writing of this note, welfare reform proposals have made slow but steady progress through the United States Congress. On March 24, 1995, the House did pass a version of the Personal Responsibility Act of 1995,[118] and a similar bill in the Senate should come to a vote shortly. This addendum will briefly survey these bills and their possibility for creating systemic reform.

The ultimate House version of the Personal Responsibility Act of 1995 passed by a vote of 234 to 199.[119] The bill's final provisions largely adhered to the expectations outlined in part I.F, with a few relevant differences. The House bill retains the idea of an overall welfare spending cap, aimed at saving $66 billion over five years.[120] Instead of limiting AFDC benefits to $15 billion annually, however, the Personal Responsibility Act ultimately imposes a slightly more generous $15.3 billion annual limit.[121] Additional savings are achieved through the freezing of child care spending at $1.94 billion per year,[122] cutting projected spending for family nutrition programs by $4.6 billion over five years,[123] holding automatic food stamp increases to 2% annually,[124] and strictly limiting the amount of benefits receivable by legal immigrants who are not United States citizens.[125] As expected, the House bill enforces these spending limits by replacing the current system of direct payments to all welfare recipients who qualify for assistance—which makes the actual amount of welfare spending dependent on the number of people who apply for benefits—with a system of "block grants" to each state—which can be set by Congress at any level. The Personal Responsibility Act transfers direct spending under 45 individual welfare programs into five such block grants, each with its own degree of control over a state's spending choices.[126]

The controls that the House bill imposes on state spending aim principally at

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* B.A., University of Pennsylvania, 1992; Candidate for J.D. and M.B.A., University of Notre Dame, 1996. This note is dedicated to the late Barbara Tunell, who showed her great compassion for the poor through providing opportunities to succeed.

118. H.R. 4, 104th Cong., 1st Sess. (1995).

119. Elizabeth Shogren, *House OK's Welfare Overhaul that Cuts Off Aid Guarantees*, L.A. TIMES, Mar. 25, 1995, at A1. *See also* Jennifer Dixon, *House OK's Welfare Reform*, DURHAM HERALD-SUN, Mar. 25, 1995, at A1; Carolyn Lochhead, *GOP's Sweeping Welfare Package Clears House*, SAN FRAN. CHRON., Mar. 25, 1995, at A1.

120. Muriel Dobbin, *House OK's Welfare Reform*, HOUS. POST, Mar. 25, 1995, at A1.

121. Shogren, *supra* note 119.

122. *Id.*

123. *Id.*

124. *Id.*

125. The bill generally prohibits non-citizen immigrants from receiving food stamps, AFDC, SSI benefits, and non-emergency medical care. This prohibition would not extend to recipients over 75 years of age who have resided in the United States for more than five years, some disabled recipients, refugees for the first five years, and veterans or active-duty military personnel along with their spouses and children. *Id.*

126. Dixon, *supra* note 119.

modifying the behavior of potential welfare recipients. As expected, the final House bill includes the provision prohibiting cash assistance to unwed mothers under 18, as well as a provision offering incentives to states that reduce illegitimate childbirths.[127] In addition, the bill includes a provision which prohibits increasing the benefits of families that have children while receiving assistance.[128] But perhaps the most significant addition to the final House bill is the imposition of work requirements and time limit provisions. The House bill includes three separate time limitations on the receipt of welfare benefits: 1) food stamp benefits are limited to 90 days for able-bodied recipients, unless they are enrolled in a job training program[129] or have at least a part-time job,[130] 2) cash assistance is limited to two years at a time, unless recipients have found work,[131] and 3) cash benefits are additionally limited to five years over the course of a recipient's life.[132]

The Senate has moved at a decidedly slower pace in its deliberations on the Personal Responsibility Act, passing its own version on September 19, 1995, by a vote of 87-12.[133] No joint committee procedures have begun as of the writing of this addendum. The Senate bill, as it currently stands, holds much in common with the House bill. It would replace direct payments with block grants to states,[134] impose limits on cash assistance of two years at a time and five years over the life of a recipient,[135] and prohibit benefits for many non-United States citizens.[136]

The current Senate bill differs from the House version markedly, however, in four principal respects. First, the Senate version does not contain either of the major behavior-modification proposals of the House bill: namely, the prohibition on additional cash payments to families that have children while on welfare,[137] and the prohibition on cash benefits to unwed mothers under 18.[138] Second, the Senate bill devotes significantly more resources to child-care programs than the House version, an estimated $11 billion over five years.[139] Third, the Senate bill would also require states to ensure the percentage of welfare recipients working or participating in job training grows to 25% by 1996, and 50% by the year 2000.[140] Failure to meet these goals would reduce a state's block grant allocation by 5%.[141] Fourth, the Dole plan responds to opponents' concerns that states might divert block grant funds to non-wel-

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127. *Id. See also* notes 86-88 for a discussion of these provisions.
128. Shogren, *supra* note 119.
129. Lochhead, *supra* note 119.
130. Shogren, *supra* note 119.
131. *Id.* This requirement is substantially similar to the two-year time limit discussed in part I.E.
132. *Id. See also* Dixon, *supra* note 119.
133. *See* Christopher Georges, *Senate Passes Welfare Bill in a Bipartisan 87-12 Vote*, WALL ST. J., Sept. 20, 1995, at A3; Robin Toner, *Senate Approves Welfare Plan that would End Aid Guarantee*, N.Y. TIMES, Sept. 20, 1995, at A1.
134. John A. MacDonald, *Senate Democrats Lose Effort to Provide $11 Billion for Child Care*, HARTFORD COURANT, Sept. 12, 1995, at A2.
135. Sue Kirchhoff, *Dole to Alter Welfare Plan in Bid to Break Impasse*, Reuters North American Wire, Sept. 8, 1995, *available in* LEXIS, Nexis Library, CURNWS File.
136. *Id.*
137. David Rosenbaum, *A Quandary for Clinton; Most Democrats Back a Bill of Lesser Evils*, N.Y. TIMES, Sept. 20, 1995, at A1.
138. *Id.*
139. Georges, *supra* note 133.
140. *Dole Files Cloture Petition on Welfare Reform Bill*, NAT'L J. CONG. DAILY, Sept. 12, 1995, *available in* LEXIS, Nexis Library, CURNWS File.
141. MacDonald, *supra* note 134.

fare projects, by requiring each state to spend 80% of its 1994 level on welfare programs over the next five years.[142]

Whether the ultimate Personal Responsibility Act of 1995 will more closely resemble the current House or Senate version is an unresolved question as of the writing of this addendum. However, it can be concluded—based on the two bills that the joint committee will work with—that any Republican welfare reform law will likely stop short of providing welfare recipients with a comprehensive, systemic incentive to find work. Both bills—although they differ on significant non-work incentive issues—settle on the two-year and five-year time limits as the mechanisms for providing work incentives to recipients. This agenda, therefore, suffers from the same shortcomings of other time limit proposals, such as the Wisconsin[143] or Clinton[144] plans; all strict time limit plans fail to provide a safety net for even the most deserving families after some period of time, yet simultaneously fail to create actual economic incentives for recipients to seek private employment during the time they do receive assistance.

On the issue of safety net provisions, defenders of the evolving Republican plan may counter that recipients are only categorically denied benefits after five years—a longer period than under plans proposed at the state level or by the Clinton Administration. This provision, however, has its own disadvantages. First, since states are not required under the House bill to spend specific amounts on job training,[145] many recipients may find themselves without a private job and without a job training opportunity from their home state, effectively eliminating them from the welfare rolls after two years. Second, to the extent recipients do receive job training—therefore enabling benefits to continue for five years—cost containment becomes a critical factor. On the issue of providing work incentives, Republican defenders may respond that a lack of individual incentives are made up by the bonuses awarded to states that move recipients from welfare to work. If individual recipients do not share a state's financial incentive, however, any state effort will fight an uphill battle in achieving the Senate's stringent work requirements.

Despite recent Republican efforts, then, developing a truly systemic welfare payment system remains a task for future legislatures to accomplish. The Republican proposal may make such a systemic approach more obtainable in the long run, however, by allowing each individual state to discuss and implement such a system with a minimum of federal interference. Rather than obviating a systemic approach then, recent events may serve to make the debate over this issue all the more vibrant.

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142. Georges, *supra* note 133.
143. *See supra* part I.B.
144. *See supra* part I.E.
145. Dixon, *supra* note 119.